REMARKS

The pending Office Action addresses and rejects claims 1, 2, 7-10, 13-20, 42, 43, and 46-50.

Amendments to the Claims

Applicants amend claims 1, 7-9, 42, 43, and 46 to recite that spinal fixation rod is biocompatible. Support for this amendment can be found throughout the specification. Claim 1 is also amended to recite that the fastening element is adapted to mate to the male connector to cause the male connector to engage the mating element. Similarly, claims 42 and 43 are amended to recite that the fastening element is adapted to cause at least one of the first and second elongate members to engage the mating element. No new matter is added.

Rejections Pursuant to 35 U.S.C. §102

(1) U.S. Patent No. 5,509,328 of Lai

The Examiner continues to reject claims 1, 2, 13-20, 42, 43, 46, 48, and 49 pursuant to 35 U.S.C.§102(b) as being anticipated by U.S. Patent No. 5,509,328 of Lai. Applicant respectfully disagree.

As noted above, independent claims 1, 42, 43, and 46 are amended to recite a biocompatible, implantable spinal fixation rod. The bicycle handlebar of Lai is not biocompatible, and Lai certainly does not teach or even suggest forming the handlebars from any type of material that is compatible with living tissue. Accordingly, claims 1, 42, 43, and 46, as well as claims 2, 13-20, and 48-49 which depend therefrom, distinguish over Lai.

(2) U.S. Patent No. 6,007,536 of Yue

Claims 1, 2, 7, 9, 13-16, 20, 42, and 43 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,007,536 of Yue. Applicants respectfully disagree.

Independent claim 1 recites that the fastening element is adapted to mate to the male connector to cause the male connector to engage the mating element and lock the elongate members in a fixed

position relative to one another, and claims 42, and 43 recite that one of the connectors engages the mating element to lock the elongate members in a fixed position relative to one another. Yue does not teach or even suggest a connector that engages a mating element, as required by claims 1, 42, and 43. The mating element in Yue is the pivot pin used to connect the blade portion and the side plate. This pin is not engaged by any other component of the device. Rather, the pin is simply inserted through the blade portion and the side plate to allow them to pivot relative to one another.

Accordingly, claims 1, 42, and 43, as well as claims 2, 7-9, 13-16, and 20 which depend therefrom, distinguish over Yue and represent allowable subject matter.

Claim Rejections under 35 U.S.C. §103

Claims 8, 10, 47, and 50 are rejected under 35 U.S.C. §103(a) as being unpatentable over Yue.

As discussed above, independent claim 1 distinguishes over Yue. Thus, claims 8 and 10 are allowable at least because they depend from allowable claim 1.

Claims 47 and 50 depend from claim 46, which likewise distinguishes over Yue. Claim 46 requires a clamping mechanism formed on a terminal end of a first elongate element. As discussed in the office action response filed on January 19, 2007, Yue does not teach a first elongate element having a clamping mechanism formed on a terminal end thereof. Neither the blade (1) nor the plate (2) includes any type of clamping mechanism for receiving a terminal end of a second elongate element. They do not include a mechanism by which one of the blade (1) and plate (2) receives and clamps on to the other. Accordingly, independent claim 46 distinguishes over Yue. Claims 47 and 50 are therefore allowable at least because they depend from allowable claim 46.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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